

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3845 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes.

2. To be referred to the Reporter or not?
:Yes.

3. Whether Their Lordships wish to see the fair copy: NO of the judgement?-No.

4. Whether this case involves a substantial question: NO of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?
:No.

RANCHHODBHAI NAGJIBHAI THESIA

Versus

STATE OF GUJARAT

Appearance:

MR MIHIR H JOSHI for Petitioner.

Mr.S.K. Patel, Assistant GOVERNMENT PLEADER
for Respondent No. 1

Mr.Kamal Trivedi, of M/S TRIVEDI & GUPTA,
for Respondents No. 2 and 3.

Mr.S.N. Soparkar, for respondent No.4.

Ms. V.P. Shah, with

MS KJ BRAHMBHATT for Respondent No. 5

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

MR.JUSTICE S.D.DAVE

Date of decision: 16/06/1999

ORAL JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

1. The 2nd respondent, Surat Municipal Corporation, invited tenders for allotment of development rights in respect of 36500 sq. metres of land, bearing Final Plot Nos. 143 and 144 of Town Planning Scheme No.8 (Umarwada) and the tender notification was published on 25.3.1999. Pursuant to the notification, respondents 4 and 5 submitted tenders and the matter was kept for final decision by the Standing Committee of the respondent-Corporation. Then the present Special Civil Application was filed and the petitioner moved for interim stay and the learned single Judge, before whom the matter came up for consideration, passed an interim order, restraining the respondent-Corporation from taking any action whatsoever in furtherance or pursuance of the tender notice dated 26.3.1999 and from finalizing the tender in the name of any person, firm or company whatsoever. The petitioner has prayed for a writ of mandamus or any other appropriate writ, order or direction, quashing and setting aside the entire procedure adopted by the 2nd respondent for disposal of the development rights in respect of the aforesaid land, bearing Final Plot Nos. 143 and 144 of Town Planning Scheme No.8. The petitioner has also prayed for a writ of mandamus, directing the respondent-Corporation to reissue proper tender notice, giving Nationwide publicity, and after formalizing express and clear terms and conditions of the tender in a manner which would ensure optimum price to the respondent-Corporation.

2. In the Special Civil Application, the petitioner has alleged that the tender notice was published only in two local dailies, viz., 'Gujarat Samachar' and 'Sandesh' and that there was no wide publicity. It is also alleged that the terms and conditions of the tender notice are vague and misleading and that the 2nd and 3rd respondents have suppressed the real value of the property. It is alleged that the entire property is occupied by hutment dwellers and transport operators, and without evicting them, the Corporation will not be in a position to give vacant possession for the developmental activities and the proposed sale of the property at this stage is only to enable certain persons to get the same at a low price. It is alleged by the petitioner that though 28 persons had purchased the tender forms, because of the vague nature of the conditions of the tender, only four persons have submitted their bids and two of them had not given the Earnest Money Deposit (E.M.D.) and only two have submitted proper tender forms and the value quoted by them is very low. According to the petitioner, this land must have fetched value more than Rs.240/- crores and the Transport Association, whose members are in occupation of

some portion of the land, had offered to purchase it for Rs.240/- crores.

3. Denying the allegations in the petition, the Town Planner, attached to the 2nd respondent-Corporation, has filed an affidavit-in-reply. It is denied that the conditions in the tender notification are vague. It is further pointed out that adequate steps have been taken to get the Transport Operators as well as the hutment dwellers evicted from the property in question. The Transport Operators had filed a writ petition, i.e. Special Civil Application No.3016 of 1999, and the same was disposed of on merits by judgment dated 3.5.1999 and that judgment was challenged before the Honourable Supreme Court in S.L.P. and the same was dismissed by the Supreme Court. It is submitted that the public notice, inviting tenders, was published in 24 daily newspapers all throughout the country. As regards valuation of the property, it is submitted that as per the revenue record, the land in question is valued at Rs.18,000/- per sq. metre, whereas the upset price was fixed by the Corporation at Rs.45,000/- per sq. metre, which is about 2.5 times more than the value reflected in the revenue records. As regards the terms and conditions of the tender notice, it is submitted that the matter was deliberated at length and in a joint meeting of the Commissioner, Director of Planning, Advisor, City Engineer, Town Development Officer, Town Planner and various other Officers and only after taking all relevant aspects into consideration, the upset price was fixed and the earnest money deposit was fixed at 25% of the total upset price and the balance amount of the tender was to be deposited within 30 days, i.e. before the submission of the building plans. It is also pointed out that the present transport godowns are located in this land and these godowns have to be shifted so as to prevent traffic congestion in that area. Other allegations made in the Special Civil Application are also denied in the affidavit-in-reply.

4. We heard the petitioner's counsel and the counsel for the 2nd and 3rd respondents, 4th respondent as also the 5th respondent.

5. The main contention urged by the petitioner's counsel is that the conditions in the tender notice are vague and misleading and they have been so incorporated to exclude the genuine bidders, who would be unwilling to risk such a large amount. According to the petitioner, the transport operators and the hutment dwellers should have been evicted first and thereafter, the Corporation

should have taken steps to sell the property to others. It is true that under normal circumstance, an owner of the property would like to sell an unencumbered property. In the instant case, there are sufficient grounds to show that the Corporation had taken all bona fide steps to evict the hutment dwellers as also the transport operators so as to make the project feasible. The counsel for the 3rd respondent submitted that as early as April, 1998, separate notices were issued to the members of the Transport Association to vacate the godowns and the tenancy in favour of them was sought to be terminated. The Transport Operators filed Special Civil Application No.3737 of 1998 and obtained interim order against eviction. Thereafter, the matter was considered by the learned single Judge and the Corporation agreed to provide alternative plot at Village Magob, which was the site selected by the members of the Transport Association. As regards the hutment dwellers also, similar gesture was shown by the respondent Corporation and the Corporation agreed that they would be provided with alternative accommodation with all basic amenities and infrastructural facilities. At the instance of the Transport Association, a writ petition, i.e. Special Civil Application No.3016 of 1999, was filed, wherein it was contended that they must be allowed to purchase the disputed land at the highest price offered by the tenderer. But, this plea was rejected by a Division Bench, of which one of us (Balakrishnan, C.J.) is a party. It was observed in paragraph 7 of that judgment :-

"... The members of the petitioner Association or the petitioner have admittedly not submitted any tender. The last date for submission of tenders was 23.4.1999 and the tenders which have been received by the respondent Corporation have not yet been opened as stated on behalf of the Corporation. The very idea of inviting tenders was to have competition amongst those who wanted to submit their tenders and if any person who has not submitted his tender is now allowed to take away the contract by a blanket offer of paying the highest of the amounts that may have been offered by the tenderers, it would run counter to the very idea of inviting tenders and to have inter se bidding. Such a course of injecting an outsider who has not made

any offer over the tenderers would negate the very concept of sale by inviting tenders...."

It is pertinent to note that the Transport Association had no grievance with regard to the alternative site offered by the Corporation.

6. The above facts would indicate that the 2nd respondent-Corporation had taken steps to see that the hutment dwellers and Transport Owners are evicted from the property and as soon as the finalization of the tender takes place, the property could be made available to the developers. It is also important to note that Clause 7(iii) of the Tender Conditions is to the following effect :-

"... Surat Municipal Corporation will hand over the vacant possession, in the manner and for limited purpose of the plot of land in question within 2 (two) months from the date of handing over the possession of the alternative godowns constructed by tenderer as specified in IIC. However, if Surat Municipal Corporation hands over the possession of the said plot prior to above limit, Surat Municipal Corporation shall intimate the probable date of handing over the possession to the offerer at least 15 days in advance. However, in computing any of the periods referred in any clause, the period during which any actions or proceedings to be taken is stayed by an order of a court shall be excluded...."

Therefore, it is clear that the conditions in the tender notice are clear and unambiguous and it is also to be noted that a person, who would enter into a commercial venture after paying crores of rupees, would be fully satisfied that he is getting possession of the property in time. Therefore, we find no force in the contention advanced by the learned counsel for the petitioner that the tender conditions are vague.

7. The next contention urged by the petitioner's counsel was that there was no sufficient publication of the notice. In the Special Civil Application, it is stated that the tender notification was published only in two newspapers, but in the affidavit-in-reply, it is stated that the notification was published in as many as

24 newspapers and all these newspapers are having circulation in the Metropolitan Cities like Mumbai, Calcutta, Chennai, Delhi and big cities like Ahmedabad. Details are furnished in paragraph 7.(A) of the affidavit-in-reply of the 2nd respondent. Therefore, we find no force in this contention urged by the petitioner.

8. Yet another contention advanced by the petitioner's counsel is that by this tender, the respondent-Corporation would not get adequate price. According to the petitioner, the value of the land is much more than Rs.171/- crores and it is submitted that the 3rd respondent, who is the Commissioner of the Surat Municipal Corporation, had made public statements that the Corporation would be in a position to get more than Rs.220/- crores in this venture. It may be noted that the upset price was fixed at Rs.45,000/- per sq. metre. This was much more than the value recorded in the revenue record. The earnest money to be deposited was Rs.14,500/- per sq. metre. It is true that two tenderers alone had submitted the tenders and one of them, viz., the 4th respondent, had quoted Rs.171/- crores and the 5th respondent had quoted Rs.166/- crores. It is also submitted that the 4th respondent later revised its offer to Rs.50,100/- per sq. metre, aggregating the total value to more than Rs.182/- crores. This is more than Rs.45,000/- per sq. metre mentioned as upset price. It cannot be assumed that merely because two tenderers had alone submitted tenders, the price offered by them was too low. The petitioner could not point out any illegality or irregularity in the procedure adopted by the Surat Municipal Corporation. Sufficient publication was made by the Corporation. We have already stated that the tender conditions were not vague or inaccurate so as to avoid any tenderers. The petitioner claims to be a businessman and a citizen, who is permanently residing at Surat. He has no interest in purchasing or engaging in these development activities. He has also not purchased the tender form. Going by the allegations in the Special Civil Application, he was aware that the tender notice was issued as early as 25.3.1999. If the tender conditions are vague and inaccurate, as now contended by the petitioner, he should have brought this fact to the notice of the Corporation or taken any action at the relevant time. The petitioner waited for the finalization of the tenders and at the late stage, filed this Special Civil Application to forestall the acceptance of the tender.

9. The decision in *Tata Cellular v. Union of India*, AIR 1996 SC 11 was cited by the petitioner's counsel.

The principles of judicial review would apply to the exercise of contractual powers by the Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. It was also observed by the Supreme Court in paragraph 113 at page 32 as under :-

"... the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts...."

In unmistakable terms, it was laid down that the modern trend points to judicial restraint in administrative action and the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made and as the court does not have the expertise to correct the administrative decision, the courts shall not venture to substitute its own decisions without necessary expertise, and the traditional grounds of judicial review are also mentioned in paragraph 93 of the judgment. It was held :-

"... The duty of the Court is to confine itself to the question of legality. Its concern should be :

1. whether a decision-making authority exceeded its powers?

2. committed an error of law.
3. committed a breach of the rules of natural justice.
4. reached a decision which no reasonable Tribunal would have reached or
5. abused its powers...."

If the whole case is viewed in the above background, it cannot be said that the authorities have committed any error of law or any procedural illegality or reached a decision which no reasonable Tribunal would have reached.

10. It is also important to note that in Shri Sachidanand Pandey and another v. The State of West Bengal and others, AIR 1987 SC 1109, it is held that it is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially the Supreme Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. We do not think that the petitioner is espousing any of these causes in this Special Civil Application.

11. The counsel for the petitioner pointed out the decision in Union of India and others v. Hindustan Development Corporation and others, (1993) 3 SCC 499. That was a case relating to a Government contract for supply of cast steel bogies to the Railway. 12 manufacturers in the field as well as two other manufacturers submitted their offers. These offers were evaluated and the Tender Committee formed an opinion that the 12 manufacturers formed a cartel and quoted identical price and, ultimately, taking the view that three big suppliers had formed a cartel, the big suppliers were not given the contract, and they challenged the decision before the Court. It was observed as under :-

"... The Government while entering into contracts or issuing quotas is expected not to act like a private individual but should act in conformity with certain healthy standards and norms. Such actions should

not be arbitrary, irrational or irrelevant. In the matter of awarding contracts inviting tenders is considered to be one of the fair ways. If there are any reservations or restrictions then they should not be arbitrary and must be justifiable on the basis of some policy or valid principles which by themselves are reasonable and not discriminatory...."

12. Our attention was also drawn to a decision of the Supreme Court in Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71, where it was observed :-

"... Even though the highest tenderer can claim no right to have his tender accepted, there being a power while inviting tenders to reject all the tenders, yet the power to reject all the tenders cannot be exercised arbitrarily and must depend for its validity on the existence of cogent reasons for such action. The object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete...."

13. In Chairman and Managing Director, SIPCOT v. Contromix (P) Ltd., AIR 1995 SC 1632, it was held as under :-

"... In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price....."

14. Bearing in mind the above principles, we do not find any illegality or procedural impropriety in the action of the 2nd respondent-Corporation. Sufficient publicity was given and detailed terms and conditions of the tender notice was made available to the tenderers. Merely because two tenderers have come forward to submit

the valid tenders cannot be taken as a ground to hold that the respondent-Corporation had committed an illegality. As E.M.D. itself, the participant had to pay Rs.41/- crores. The total sale consideration itself was around Rs.171/- crores. Even according to the petitioner, this developmental work is subjected to many conditions imposed by the Corporation. The Contractor has to first construct the transport godowns and then only the property will be made available to that party. Probably, all these conditions and the huge amount of investment must have dissuaded many to enter the fray. There is nothing on the record to show that the total value now quoted by the highest bidder was too low so as to warrant an inference that the 2nd respondent-Corporation has committed illegality and, thereby, the price fetched was too low. The Court can interfere in such matters, that too, at the instance of a public interested litigant if only it is proved that there was grave irregularity so as to shock the judicial conscience. The petitioner did not point out any illegality or irregularity committed by the respondent-Corporation and thereby it could not procure the maximum price. It is also not proved that the whole transaction was not transparent and was intended to benefit some private traders. The petitioner has no case that the Corporation was in any way acted mala fide to help the 4th respondent.

15. It may be noted that the respondents 4 and 5 have already deposited Rs.41/- crores each with the respondent-Corporation and when the Corporation was about to take final decision in the matter at the instance of the petitioner, the entire proceedings were stayed and the counsel for the 4th respondent is justified in making the submission that during the short span of 15 days, his client has suffered loss of lakhs of rupees by way of interest. The counsel for the 5th respondent also made a similar submission that because of the interim order, the 5th respondent could not get refund of Rs.41/- crores deposited by him as earnest money and, therefore, it was prayed that this public interest litigation should be dismissed with exemplary costs, but having regard to the facts and circumstances of this case, we dismiss the Special Civil Application with usual costs. Notice is discharged. Ad interim relief is vacated.

(apj)